

115TH CONGRESS
1ST SESSION

S. 1914

To amend title XVIII of the Social Security Act in order to strengthen rules in case of competition for diabetic testing strips, and for other purposes.

IN THE SENATE OF THE UNITED STATES

OCTOBER 4, 2017

Mr. WARNER (for himself and Mr. SCOTT) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend title XVIII of the Social Security Act in order to strengthen rules in case of competition for diabetic testing strips, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Protecting Access to
5 Diabetes Supplies Act of 2017”.

6 **SEC. 2. STRENGTHENING RULES IN CASE OF COMPETITION**
7 **FOR DIABETIC TESTING STRIPS.**

8 (a) SPECIAL RULE IN CASE OF COMPETITION FOR
9 DIABETIC TESTING STRIPS.—

1 (1) IN GENERAL.—Paragraph (10) of section
2 1847(b) of the Social Security Act (42 U.S.C.
3 1395w–3(b)) is amended—

4 (A) in subparagraph (A), by striking the
5 second sentence and inserting the following new
6 sentence: “With respect to bids to furnish such
7 types of products on or after January 1, 2019,
8 the volume for such types of products shall be
9 determined by the Secretary through the use of
10 multiple sources of data (from mail order and
11 non-mail order Medicare markets), including
12 market-based data measuring sales of diabetic
13 testing strip products that are not exclusively
14 sold by a single retailer from such markets.”;
15 and

16 (B) by adding at the end the following new
17 subparagraphs:

18 “(C) DEMONSTRATION OF ABILITY TO
19 FURNISH TYPES OF DIABETIC TESTING STRIP
20 PRODUCTS.—With respect to bids to furnish di-
21 abetic testing strip products on or after Janu-
22 ary 1, 2019, under the program described in
23 subparagraph (A), the Secretary shall reject a
24 bid submitted by an entity if the entity does not
25 attest to the Secretary and demonstrate,

1 through letters of intent with manufacturers,
2 wholesalers, or other suppliers, or other evi-
3 dence as the Secretary may specify, that the en-
4 tity has the ability to obtain an inventory of the
5 types and quantities of diabetic testing strip
6 products that will allow the entity to furnish
7 such products in a manner consistent with its
8 bid.

9 “(D) USE OF UNLISTED TYPES IN CAL-
10 CULATION OF PERCENTAGE.—With respect to
11 bids to furnish diabetic testing strip products
12 on or after January 1, 2019, in determining
13 under subparagraph (A) whether a bid sub-
14 mitted by an entity under such subparagraph
15 covers 50 percent (or such higher percentage as
16 the Secretary may specify) of all types of dia-
17 betic testing strip products, the Secretary may
18 not attribute a percentage to types of diabetic
19 testing strip products that the Secretary does
20 not identify by brand, model, and market share
21 volume.

22 “(E) ADHERENCE TO DEMONSTRATION.—

23 “(i) IN GENERAL.—In the case of an
24 entity that is furnishing diabetic testing
25 strip products on or after January 1,

1 2019, under a contract entered into under
2 the competition conducted pursuant to
3 paragraph (1), the Secretary shall estab-
4 lish a process to monitor, on an ongoing
5 basis, the extent to which such entity con-
6 tinues to cover the product types included
7 in the entity's bid.

8 “(ii) TERMINATION.—If the Secretary
9 determines that an entity described in
10 clause (i) fails to maintain in inventory, or
11 otherwise maintain ready access to
12 (through requirements contracts or other-
13 wise) a type of product included in the en-
14 tity's bid, the Secretary may terminate
15 such contract unless the Secretary finds
16 that the failure of the entity to maintain
17 inventory of, or ready access to, the prod-
18 uct is the result of the discontinuation of
19 the product by the product manufacturer,
20 a market-wide shortage of the product, or
21 the introduction of a newer model or
22 version of the product in the market in-
23 volved.”.

24 (b) CODIFYING AND EXPANDING ANTI-SWITCHING
25 RULE.—Section 1847(b) of the Social Security Act (42

1 U.S.C. 1395w-3(b)), as amended by subsection (a)(1), is
2 further amended—

3 (1) by redesignating paragraph (11) as para-
4 graph (12); and

5 (2) by inserting after paragraph (10) the fol-
6 lowing new paragraph:

7 “(11) ADDITIONAL SPECIAL RULES IN CASE OF
8 COMPETITION FOR DIABETIC TESTING STRIPS.—

9 “(A) IN GENERAL.—With respect to an en-
10 tity that is furnishing diabetic testing strip
11 products to individuals under a contract entered
12 into under the competitive acquisition program
13 established under this section, the entity shall
14 furnish to each individual a brand of such prod-
15 ucts that is compatible with the home blood glu-
16 cose monitor selected by the individual.

17 “(B) PROHIBITION ON INFLUENCING AND
18 INCENTIVIZING.—An entity described in sub-
19 paragraph (A) may not attempt to influence or
20 incentivize an individual to switch the brand of
21 glucose monitor or diabetic testing strip product
22 selected by the individual, including by—

23 “(i) persuading, pressuring, or advis-
24 ing the individual to switch; or

1 “(ii) furnishing information about al-
2 ternative brands to the individual where
3 the individual has not requested such in-
4 formation.

5 “(C) PROVISION OF INFORMATION.—

6 “(i) STANDARDIZED INFORMATION.—
7 Not later than January 1, 2019, the Sec-
8 retary shall develop and make available to
9 entities described in subparagraph (A)
10 standardized information that describes
11 the rights of an individual with respect to
12 such an entity. The information described
13 in the preceding sentence shall include in-
14 formation regarding—

15 “(I) the requirements established
16 under subparagraphs (A) and (B);

17 “(II) the right of the individual
18 to purchase diabetic testing strip
19 products from another mail order sup-
20 plier of such products or a retail phar-
21 macy if the entity is not able to fur-
22 nish the brand of such product that is
23 compatible with the home blood glu-
24 cose monitor selected by the indi-
25 vidual; and

1 “(III) the right of the individual
2 to return diabetic testing strip prod-
3 ucts furnished to the individual by the
4 entity.

5 “(ii) REQUIREMENT.—With respect to
6 diabetic testing strip products furnished on
7 or after the date on which the Secretary
8 develops the standardized information
9 under clause (i), an entity described in
10 subparagraph (A) may not communicate
11 directly to an individual until the entity
12 has verbally provided the individual with
13 such standardized information.

14 “(D) ORDER REFILLS.—With respect to
15 diabetic testing strip products furnished on or
16 after January 1, 2019, the Secretary shall re-
17 quire an entity furnishing diabetic testing strip
18 products to an individual to contact and receive
19 a request from the individual for such products
20 not more than 14 days prior to dispensing a re-
21 fill of such products to the individual.”.

22 (c) IMPLEMENTATION; NON-APPLICATION OF THE
23 PAPERWORK REDUCTION ACT.—

24 (1) IMPLEMENTATION.—Notwithstanding any
25 other provision of law, the Secretary of Health and

1 Human Services may implement the provisions of,
2 and amendments made by, this section by program
3 instruction or otherwise.

4 (2) NON-APPLICATION OF THE PAPERWORK RE-
5 Duction ACT.—Chapter 35 of title 44, United
6 States Code (commonly referred to as the ‘Paper-
7 work Reduction Act of 1995’) shall not apply to this
8 section or the amendments made by this section.

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